

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929

RPFC.No. 13 of 2003

MC.188/2000 OF FAMILY COURT, KOZHIKODE.

PETITIONER/RESPONDENT

C.PERIYASWAMI, AGED ABOUT 45 YEARS,
S/O.MUTHUSWAMI, WORKING AT GOVT. POLYTECHNIC
ASSISTANT, GOVT.POLYTECHNIC, PALAKKAD,
PALAKKAD TOWN PSI.

BY ADV. SRI.R.BINDU (SASTHAMANGALAM),

RESPONDENTS/ PETITIONERS:

1. K.THANKAMMA, AGED 34 YEARS, D/O.DAMU,
KUNNATHODIYIL HOUSE, VIYYOOR AMSOM,
KOLLAM DESOM, KOYILANDI TALUK.
2. AKHIL, 1 YEARS, S/O.PERIYASWAMI,
(MINOR), REPRESENTED BY 1ST PETITIONER.

BY ADV. SRI.SUNNY MATHEW.

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD
ON 07/11/2007,THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

ORDER ON CRL.M.P. NO. 1119/2003 IN R.P. (F.C). NO. 13/2003

DISMISSED

07/11/2007.

SD/- K.R.UDAYABHANU, JUDGE.

//TRUE COPY//

prv.

K.R. UDAYABHANU, J.

R.P.(FC)No.13 of 2003

DATED THIS THE 7th November 2007

ORDER

The revision petitioner is the respondent in M.C.188/2000 in the file of the Family Court, Kozhikode and under orders to pay maintenance at the rate of Rs.500/- per mensum to the minor 2nd respondent. The alleged illegitimate child of the revision petitioner. It is the case of the first petitioner in the M.C.that she fell in love with the respondent and had physical contacts and as a result of the same, the 2nd respondent child was born. The respondent was already a married man with children. Subsequently an agreement was entered into between the parties at the instance of the local politicians and as per the agreement a sum of Rs.5,000/- for preliminary expenses and Rs.30/- per mensum as maintenance allowances to the child are to be paid. The above amount has not been paid. It is alleged that he is a Government servant getting more than Rs.6000/- per month as salary and also having landed properties. The first petitioner in the M.C.is a lady without having any means.

The respondent had disputed the alleged intimacy as well as the paternity of the child and also the genuineness of the agreement and the alleged income that he is having.

The evidence adduced in the matter consisted of the testimony of PW1, Ext.A1 and RW1 and Ext.X1.

PW1 has testified with respect to the intimacy developed that the revision petitioner/respondent was the next door neighbour and that he was living therein in a rented house and that she used to go to his house to draw water from the well. She has also deposed in proof of Ext.A1 agreement. It is seen executed in 23rd November 1988. She has also deposed as to the circumstances under which the agreement was executed at the office of the communist party. During the proceedings in the trial court, the parties underwent DNA test and Ext.X1 is the report which mentions that it is confirmed that the alleged father is the biological father. It was also brought out that the respondent at the time was working as Superintendent in the Government Polytechnic, Palakkad.

Counsel for the revision petitioner has relied on the decision of the apex Court in **Kamti Devi v. Poshi Ram(2001)5 S.C.C.311** and **Banarsi Dass v. Teeku Dutta, (2005)4 SCC 449** in support of the proposition that result of the DNA test cannot be treated as conclusive. I find that in both the above decisions there was dispute with respect to the paternity of the child that was delivered during the period of a valid marriage and the question was as to whether the

result of the DNA test is sufficient to rebut the statutory presumptions under Sections 112 of the Evidence Act. It is in the above circumstances that the court held that the result of DNA test is not conclusive to rebut the statutory presumptions and that non-access should be proved. I find that the situation in the present case is an entirely different one.

The decision of this Court in **Kunhiraman v. Manoj, 1991(2) KLT 190** was relied on by the respondent herein. It was held by this Court in the above decision that the result of DNA test by itself could be taken as conclusive in deciding paternity. The facts of that the above case are similar to the one involved herein. I find that in view of the evidence of PW1 and Ext.X1 paternity of the minor stands established. The amount of maintenance ordered at the rate of Rs.500/- cannot be said to be excessive. I find no merit in the revision petition filed. The finding of the court below is confirmed. The revision petitioner would be bound to pay maintenance to the 2nd respondent minor child till he attains majority. The revision petition is disposed of accordingly.

K.R.UDAYABHANU, JUDGE

ks.

RPFC.13/2003

-4-

ks.

K.R.UDAYABHANU, J

R.P.(FC)NO.13 OF 2003

ORDER

7-11-2007